

JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

AUREFLAM CORPORATION, a California corporation

DEFENDANTS

TUYEN HUY NGUYEN, individually and doing business as PHO HOA HUNG and PHO HOA HUNG II, et al.

ADR(b) County of Residence of First Listed Plaintiff Sacramento
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

E-filing

John C. Gorman
Gorman & Miller, P.C.
210 N Fourth Street, Suite 200
San Jose, CA 95112 (408) 297-2222

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | PTF | DEF | PTF | DEF | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|---|---|---|--|
| 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | 610 Agriculture | 400 State Reapportionment |
| 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury—Med. Malpractice | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 410 Antitrust |
| 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury — Product Liability | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 430 Banks and Banking |
| 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 450 Commerce | <input type="checkbox"/> 460 Deportation |
| 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations | <input type="checkbox"/> 480 Consumer Credit |
| 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 490 Cable/Sat TV | <input type="checkbox"/> 490 Other Statutory Actions |
| 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 510 HIA (1395ff) | <input type="checkbox"/> 510 Selective Service |
| 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 385 Property Damage | <input type="checkbox"/> 520 Black Lung (923) | <input type="checkbox"/> 520 Securities/Commodities/ Exchange |
| 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 390 Other Personal Injury | <input type="checkbox"/> 530 General | <input type="checkbox"/> 530 Customer Challenge |
| 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 400 Other Civil Rights | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 540 Agricultural Acts |
| 195 Contract Product Liability | | | <input type="checkbox"/> 540 Mandamus & Other Employment | <input type="checkbox"/> 550 Civil Rights |
| 196 Franchise | | | <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 560 Economic Stabilization Act |
| | REAL PROPERTY | CIVIL RIGHTS | LABOR | <input type="checkbox"/> 565 RSI (405(g)) |
| 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence | <input type="checkbox"/> 570 Fair Labor Standards Act | <input type="checkbox"/> 570 12 USC 3410 |
| 220 Foreclosure | <input type="checkbox"/> 442 Employment | Habeas Corpus: | <input type="checkbox"/> 572 Labor/Mgmt. Relations | <input type="checkbox"/> 580 Other Statutory Actions |
| 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/ Accommodations | <input type="checkbox"/> 530 General | <input type="checkbox"/> 573 Labor/Mgmt. Reporting & Disclosure Act | <input type="checkbox"/> 590 Agricultural Acts |
| 240 Torts to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 574 Railway Labor Act | <input type="checkbox"/> 592 Economic Stabilization Act |
| 245 Tort Product Liability | <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment | <input type="checkbox"/> 540 Mandamus & Other Employment | <input type="checkbox"/> 579 Other Labor Litigation | <input type="checkbox"/> 593 Environmental Matters |
| 290 All Other Real Property | <input type="checkbox"/> 446 Amer. w/ Disabilities - Other | <input type="checkbox"/> 550 Civil Rights | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 594 Energy Allocation Act |
| | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 555 Prison Condition | | <input type="checkbox"/> 595 Freedom of Information Act |
| | | | IMMIGRATION | |
| | | | <input type="checkbox"/> 462 Naturalization Application | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) |
| | | | <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |
| | | | <input type="checkbox"/> 465 Other Immigration Actions | |
| | | | | FEDERAL TAX SUITS |
| | | | | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) |
| | | | | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | | |
|---|---|--|---|----------------------------|---|---|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | Transferred from (specify) | <input type="checkbox"/> 5 another district | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Judge from Magistrate Judgment |
|---|---|--|---|----------------------------|---|---|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC Sections 1114 and 1125

VI. CAUSE OF ACTION

Brief description of cause:

Lenham Act service mark infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ TBD CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)**DATE
04/09/08

SAN FRANCISCO/OAKLAND

SAN JOSE

SIGNATURE OF ATTORNEY OF RECORD

ADR E-filing

ORIGINAL FILED

APR 10 2008

Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

1 John C. Gorman, #91515
2 Charles J. Stiegler, #245973
GORMAN & MILLER, P.C.
210 North Fourth Street, Suite 200
3 San Jose, CA. 95112
(408) 297-2222 (phone)
(408) 297-2224 (fax)

5 Attorneys for Plaintiff
AUREFLAM CORPORATION

7

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 AUREFLAM CORPORATION, a
California corporation;

11 Plaintiff,

12 v.

13 TUYEN HUY NGUYEN,
14 individually and doing
business as PHO HOA HUNG and
PHO HOA HUNG II; TU TIEN
NGUYEN, individually and
doing business as PHO HOA
HUNG and PHO HOA HUNG II;
LONG CUU VU, individually and
doing business as PHO HOA
HUNG II and DOES 1 through
10, inclusive;

15 Defendants.

16 Case No.

17 COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATION OF LANHAM ACT (15
U.S.C. §§ 1114 and 1125);
VIOLATION OF CAL. BUS. &
PROF. CODE §§ 17200 & 17500

18 DEMAND FOR JURY TRIAL

19 BZ

20 Plaintiff Aureflam Corporation ("Aureflam") alleges:

21 JURISDICTION AND VENUE

22 1. This is a civil action brought under 15 U.S.C. §§ 1114
23 and 1125. This court has subject matter jurisdiction over
24 plaintiff's claims under 15 U.S.C. § 1121 and 28 U.S.C. § 1337.

1 2. Personal jurisdiction over the defendants exists because
2 each of the defendants resides in this district and/or has
3 participated in, authorized, controlled, and/or ratified misconduct
4 of the other defendants as alleged herein, which conduct has had an
5 effect on commerce occurring within this district and the State of
6 California.

7 3. Venue is proper pursuant 28 U.S.C. § 1331(b)(1) because
8 at least one defendant resides in this judicial district and all
9 defendants reside in the State of California. Venue is also proper
10 pursuant 28 U.S.C. § 1331(b)(2) because a substantial part of the
11 events and/or omissions giving rise to plaintiff's claims occurred
12 within this judicial district.

13 DESCRIPTION OF THE PARTIES

14 4. Plaintiff Aureflam is a California corporation which
15 maintains its principal place of business at 1420 Fulton Avenue,
16 Building B, Sacramento, California 95825. Plaintiff is engaged in
17 the business of operating and licensing restaurants serving
18 Vietnamese-style cuisine under the name "Pho Hoa." Its "Pho Hoa"
19 service mark has been used in interstate commerce in connection
20 with the operation of Vietnamese-style restaurants since January
21 1983.

22 5. On information and belief, defendants Tuyen Huy Nguyen
23 and Tu Tien Nguyen are individuals who are doing business under the
24 fictitious business name of Pho Hoa Hung at a restaurant located at
25 2211 International Boulevard, Oakland, California 94541 and who
26 also do business under the fictitious business name of Pho Hoa Hung
27 II at a restaurant located at 410 West A Street, Hayward,
28 California 94541. On further information and belief, defendant

1 Long Cuu Vu is also doing business in conjunction with defendants
2 Tuyen Huy Nguyen and Tu Tien Nguyen, including doing business under
3 the fictitious business name of Pho Hoa Hung II at the restaurant
4 located at 410 West A Street, Hayward, California 94541

5 6. Plaintiff is ignorant of the true names and capacities of
6 the defendants sued under the fictitious names "DOES 1 through 10,
7 inclusive." Plaintiff is informed and believes that each such
8 fictitiously named defendant is liable in some manner for the acts
9 and omissions set forth herein. When the true names and capacities
10 of such fictitiously named defendants are ascertained, plaintiff
11 shall amend this complaint to insert the same.

12 7. On information and belief, at all times mentioned herein,
13 the defendants, and each of them, were acting on their own behalf
14 and/or as the agents, servants, partners, joint venturers,
15 conspirators, and/or employees of the other defendants.

GENERAL ALLEGATIONS

17 8. Aureflam is the owner of a federal registration on the
18 "Pho Hoa" service mark in International Class 42 covering the field
19 of "restaurant services." The "Pho Hoa" service mark was
20 officially registered by Aureflam with the United States Patent &
21 Trademark Office ("USPTO") on November 19, 1996 (Registration No.
22 2,017,091). The "Pho Hoa" mark became "incontestable" pursuant to
23 Section 15 (15 U.S.C. § 1065) and Section 33(b) (15 U.S.C. 1115(b))
24 of the Lanham Act in 2004. As a result of plaintiff's efforts, the
25 "Pho Hoa" service mark and brand have become well known both
26 throughout the United States and internationally.

27 9. Defendants presently own and/or are involved in the
28 operation of Vietnamese-style restaurants in Oakland and Hayward,

1 California that do business under the name "Pho Hoa Hung"
2 (sometimes known as "Pho Hoa Hung I") and "Pho Hoa Hung II."

3 10. Prior to filing this lawsuit, plaintiff sent written
4 notice to the defendants demanding that they cease and desist use
5 of the "Pho Hoa Hung" mark or any other mark that is confusingly
6 similar to "Pho Hoa."

7 11. Defendants have ignored and have not responded to
8 plaintiff's cease and desist request.

FIRST COUNT

(Violation of the Lanham Act,

15 U.S.C. §§ 1114(1)(a) and 1125(a), Against All Defendants)

12 12. Plaintiff Aureflam repeats and realleges the allegations
13 of paragraphs 1 through 11.

13. Defendants have used, and continue to use the "Pho Hoa
Hung" mark in connection with the operation of their Vietnamese
style restaurants. Said mark is confusingly similar to plaintiff's
"Pho Hoa" mark and is being used without the consent of plaintiff.
On information and belief, continued use of the "Pho Hoa Hung" mark
is likely to cause confusion, mistake, and/or deceive the public.

20 14. On information and belief, as a direct result of the
21 defendants' conduct, Aureflam has sustained, and continues to
22 sustain, damages in an amount not yet ascertained. In addition,
23 Aureflam is entitled to recover interest at the legal rate.

24 15. Defendants have intentionally and willfully used the "Pho
25 Hoa Hung" mark in connection with the sale, offering for sale, or
26 distribution of goods and/or services. Plaintiff Aureflam is
27 therefore entitled to recover judgment for three times the
28 defendants' profits or Aureflam's damages, whichever is greater,

1 together with reasonable attorney's fees and costs, pursuant to 15
2 U.S.C. § 1117(b).

3 16. Unless defendants are enjoined from operating their
4 restaurant under the "Pho Hoa Hung" name, plaintiff Aureflam will
5 sustain, and is threatened with continuing to sustain, irreparable
6 injury for which damages and other remedies at law are inadequate.
7 Injunctive relief is also necessary to avoid a multiplicity of
8 suits based on each future violation that may be committed by the
9 defendants.

SECOND COUNT

(Violation of Cal. Bus. & Prof. Code §§ 17200)

and 17500 Against All Defendants)

13 17. Plaintiff Aureflam repeats and realleges the allegations
14 of paragraphs 1 through 16.

15 18. Within the past four years, the defendants have engaged
16 in acts of unfair competition and/or false advertising within the
17 meaning of California Business & Professions Code §§ 17200 and
18 17500 by engaging in the above-described unlawful, unfair and
19 fraudulent businesses practices and unfair, deceptive, untrue, and
20 misleading advertising.

21 19. Plaintiff Aureflam is entitled to issuance of preliminary
22 and permanent injunctions prohibiting further acts of unfair
23 competition and false advertising by the defendants.

PRAYER FOR RELIEF

25 WHEREFORE, plaintiff Aureflam prays for judgment against the
26 defendants and each of them as follows:

27 (1) Damages and/or disgorgement of defendants' profits and
28 ill-gotten gains according to proof, together with interest at the

1 legal rate;

2 (2) Treble damages pursuant to 15 U.S.C. § 1117(b);

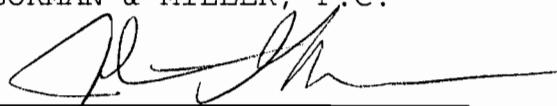
3 (3) Preliminary and permanent injunctive relief;

4 (4) Costs of suit;

5 (5) Attorney's fees as permitted by law; and

6 (6) Such other relief as the court deems appropriate.

7
8 GORMAN & MILLER, P.C.
9

10 By 

11 JOHN C. GORMAN
12 Attorneys for Plaintiff
13 Aureflam Corporation
14
15

16 DEMAND FOR JURY TRIAL

17 Pursuant to Fed. R. Civ. P. 38(b), plaintiff hereby demands
18 trial by jury.

19
20 GORMAN & MILLER, P.C.
21

22 By 

23 JOHN C. GORMAN
24 Attorneys for Plaintiff
25 Aureflam Corporation
26
27
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